

Message Text

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ACTION EUR-25

INFO OCT-01 IO-13 ADP-00 EB-11 DOTE-00 CIAE-00 COME-00

DODE-00 FMC-04 INR-09 NSAE-00 RSC-01 CG-00 COA-02 L-03

AID-20 CEA-02 EA-11 FRB-02 NEA-10 OPIC-12 TRSE-00

CIEP-02 LAB-06 SIL-01 SAL-01 OMB-01 TAR-02 AGR-20

OIC-04 STR-08 RSR-01 /172 W
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P R 101309 Z MAR 73

FM USMISSION OECD PARIS

TO SECSTATE WASHDC PRIORITY 9020

INFO AMEMBASSY LONDON

USMISSION USUN NEW YORK

USMISSION GENEVA

UNCLAS OECD PARIS 6026

E. 11652: N/A

TAGS: ETRN, UNCTAD, OECD

SUBJECT: SHIPPING; LINER CONFERENCE CODE; MTC DRAFTING GROUP
MEETING, MARCH 5-8

REF: (A) STATE 037811 (B) STATE 038064 (C) STATE 039275

EB/ MT FOR WEBB

1. SUMMARY. WORKING DRAFT OF PERSONAL PROPOSALS OF DRAFTING
GROUP MEMBERS FOR SG/ UNCTAD BEING HAND CARRIED TO DEPARTMENT
(WEB) MARCH 12; CLEAN (CUT RENUMERED) TEXT WILL BE POUCHED
AS SOON AS AVAILABLE. DG TEXT IS IN ALTERNATE AND BRACKETED FORM;
MARCH 26 AND SUBSEQUENT SG MEEINGS WILL DECIDE FINAL FORM
OF COUNTER- PROPOSALS. DG CONSIDERED DG MEMBERS' TEXTS (REF -)
AND ALSO FRG, CENSA, AND EURPEAN SHIPPERS COUNCIL
POSITIONS (POUCHED) DG ACCEPTED US SUGGESTION (REF C)
THAT THERE BE ONLY EXCHANGE OF VIEWS ON RESOLUTION OF
DISPUTES. THUS, REVISED UK PAPER AS WELL AS CONTRIBUTIONS
BY SARLIS (GREECE) AND BERNARD (FRANCE) ON DISPUTES
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WILL BE SUBMITTED TO SG IN ADDITION TO BUT NOT AS PART OF DG TEXT. WILLOTT BEING TRANSFERRED TO UK TREASURY MARCH 13 AND UK PAPER WILL BE DEFENDED BY HIS SUCCESSOR. DG CHAIRMAN (MCQUEEN UK) NOTED THAT UK AND SEVERAL SCANDINAVIAN COUNTRIES PLAN TO SEND LEGAL EXPERTS TO MARCH 26 SG MEETING AND THAT IN ADDITION TO DG TEXT MALINOWSKI QUESTIONNAIRE OF FEBRUARY 20 (ALSO POUCHED) WOULD BE CONSIDERED. FOLLOWING COMMENTS ON TEXT TOUCH ONLY ON PROBLEM AREAS; IN MOST CASES, SUBSTANCE OF US POSITION IS IN TEXT. END SUMMARY.

2. OBJECTIVES AND PRINCIPLES: BG NOTED US COMMENT THAT THIS SECTION MIGHT BE UNNECESSARY (REF A, PARA 4) AND PROCEEDED ON BASIS THAT OBJECTIVES WERE GENERAL ENOUGH TO BE HARMLESS BUT THAT STATEMENT OF PRINCIPLES MIGHT CREATE PROBLEMS OF INTERPRETATION VIS- A- VIS RELEVANT PARTS OF CODE. THUS DG HAS PROVIDED TEXT ON PRINCIPLES IN CASE SG DECIDES TO GO BEYOND STATEMENT OF OBJECTIVES. SWEDES INSISTED ON MENTION OF LDC INTERESTS IN OBJECTIVES (AND THROUGHOUT TEXT) ON INSTRUCTIONS FROM STOCKHOLM; US SUGGESTED THAT THIS TACTICAL MATTER WHICH MIGHT BE TAKEN UP BY SG. UK SAID MENTION OF LDCS IN OBJECTIVES WOULD BIAS AWARDS IN ARBITRATION CASES. BRACKETING OF "TO EXTENT POSSIBLE" (REF A, PARA 5, 3) WAS AT REQUEST OF UK, WHO THROUGHOUT DRAFT WAS CLEAR AND FIRM IN OPPOSITION TO US ON ROLE OF GOVERNMENTS.

3. RELATIONS BETWEEN MEMBERS. DG INTERPRETED "MAY REFER" TO MEAN "HAS THE RIGHT TO".

7((SEE PARA 6

?)92) RAISED POINT OF WHAT COULD BE DONE IF CONFERENCE REFUSED TO IMPLEMENT CONCILIATORS' DECISION OTHERS FELT CODE WOULD AS MATTER OF COURSE REQUIRE CONFERENCES TO ENFORCE CONCILIATION DECISIONS. DG DISCUSSION ON PARTICIPATION IN TRADE RESULTED IN POSING FOUR ALTERNATIVES FOR SG, INCLUDING US B 7 A (REF A, PARA 7). REFERRING TO WAY- PORT TRADES DROPPED ON GROUNDS IT WAS TOO CONFUSING AND COMPLICATED FOR INCLUSION IN CODE. PARA 28 CONSISTS OF ORAL PROPOSITION MADE BY UK AT VERY END OF MEETING; IT WAS ACCEPTED BY DG IN SUBSTANCE.

4. RELATIONS WITH SHIPPERS. DG UNABLE TO DISCERN "OTHER AFFECTED PARTIES" OR MEANING OF "OTHERWISE DISCRIMINATE" IN US C1 A, BUT DG TEXT REFLECTS TRUST OF REF B, PARA 2. SIMILARLY "OF THE

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GOVERNMENTS CONCERNED" IN C2(C) (1) DROPPED UNDER

HEADIN OF LOYALTY ARRANGEMENTS. UNDER DISPENSATION
HEADING (REF B, PARA 2), GREEKS PREFERRED SIMPLICITY
OF AUTOMATIC DISPENSATION TO LANGUAGE IN US C 3 B.
UNDER OUTSIDE COMPETITION HEADING, FULL PARA 3 DG WORKING
DRAFT READS " NO MEASURES SHALL BE TAKEN BY GOVERNMENTAL
AUTHORITIES OR OTHER AGENCIES TO PREVENT AN OUTSIDE
LINE FROM COMPETING ON A COMMERCIAL BASIS WITH THE
CONFERENCE".

5. FREIGHT RATES. UNDER GENERAL INCREASES HEADING,
DG POSED TWO ALTERNATIVES, BOTH REFLECTING GREEK DESIRE
TO USE " INDEPENDENT ACCOUNTANTS" TO " FIND FACTS"
(REF B, PARA3), UNDER CURRENCIES, ALTERNATIVE B READS
" SEE DEVELOPING COUNTRY CODE, TD/ III/ RES/66, PARAS
48-53, EXCLUDING REFERENCES TO GOVERNMENTS", NEXT
PARA (50 DG WORKING DRAFT) STARTS " SUCH
TARIFF ADJUSTMENTS...". SECOND SENTENCE OF FOLLOWING
PARA (51 ON DISPUTES ABOUT FREIGHT RATES AND
SURCHARGES) READS " WHATEVER THE PROCEDURES ADOPTED,
THE TIME LIMIT FOR THE IMPLEMENTATION OF A CHANGE
IN RATE OR INSTITUTION OF A NEW RATE ON WHICH
AGREEMENT HAS NOT BEEN REACHED SHALL NOT EXCEED
(SIX MONTHS) (A STIPULATED PERIOD PREVIOUSLY
AGREED BETWEEN THE CONFERENCE AND REPRESENTATIVES
OF SHIPPERS) AFTER THE DATE OF NOTICE BY THE
CONFERENCE, UNLESS OTHERWISE AGREED BY THE INTERESTED
PARTIES". PARENTHESES SIGNIFY BRACKETED ALTERNATIVES.

6. CONSULTATION AND RESOLUTUION OF DISPUTES. RE US
QUERY (REF C, PARA 4) UK SAID INTENTION WAS TO IMPOSE
LEGAL REQUIREMENT ON CONFERENCE TO HAVE RESOLUTION
MACHINERY IN ORDER TO AVOID SETTLEMENTS BY GOVERNMENTS
ON NON- COMMERCIAL BASIS. ROLE OF COURTS WOLD BE
TO ENFORCE DEICSIONS OF CONFERENCE MACHINERY. IN UK
VIEW, CONFERENCE MADHINERY SHOULD FAVOR ARBITRATION
UNLESS PARTIES TO DISPUTE AGREE TO CONCILIATON. UK SAID
" UNLESS OTHERWISE AGREE" NOT SPECIFICALLY INTENDED TO ALLOW
APPLICATION OF US LAW BUT (IN WHAT APPRENTLY INTENDED TO BE
INNOCENCE) SAID THIS WAS POSSIBILTIIY THEY HAD
NOT CONSIDERED BEFORE. UK ALSO NOTED DIFFICULTY UNDER
ENGLISH LAW IN DEVISING LEGAL DEFINITIONS FOR
CONCEPTS LIKE " WILL CONSULT" AND IN MAKING LEGALLY
ENFORCEABLE PURELY COMMERCIAL MATTERS LIKE FREIGHT
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RATES.
BROWN

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